

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Rate Adjustment Due to Extraordinary or
Exceptional Circumstances

Docket No. R2013-11

PUBLIC REPRESENTATIVE COMMENTS ADDRESSING NOTICE AND ORDER ON
THE POSTAL SERVICE'S EXIGENT SURCHARGE REMOVAL PLAN

(July 28, 2014)

I. INTRODUCTION

On June 2, 2014, the Postal Service filed a report concerning its plan for removing the exigent surcharge from the price base for most market dominant products.¹ On June 11, 2014, the Commission solicited comments on the Postal Service's plan and identified specific topics for discussion.² The Public Representative respectfully submits the following comments for consideration.

II. ANALYSIS OF POSTAL SERVICE PROPOSAL

A. The Postal Service's General Position

The Postal Service contends that an exigent surcharge removal plan "would be dependent on a number of factors, like secular volume trends and the rate of inflation,

¹ Report of the United States Postal Service in Response to Order No. 1926 Regarding Surcharge Removal Plan, June 2, 2014 (Report). See also, Order Granting Exigent Price Increase, December 24, 2013 (Order No. 1926).

² Notice and Order on the Postal Service's Exigent Surcharge Removal Plan, June 11, 2014 (Order No. 2089).

that are beyond the control of the Postal Service, speculative, and difficult to predict.” Report at 1. It continues that the “timing and nature” of any rescission will also be “influenced by future price adjustments” and “the finances of the Postal Service and prevailing market conditions at the time those pricing decisions need to be made.” *Id.* at 2. Therefore, the Postal Service argues that it is “not in a position to present a definitive ‘plan’ at this time”. *Id.* at 1.

The Public Representative is not persuaded by the Postal Service’s argument. The Commission stated that the exigent increase is to go into effect “as a surcharge.” Order No. 1926 at 193. None of the factors cited by the Postal Service prevent or influence the development of a plan to remove this surcharge. The Postal Service has not provided persuasive explanation for the Public Representative to conclude otherwise. At most, the cited factors will influence the timing, but not the methodology, for reversing the surcharge.

B. Specific Postal Service Proposals

The Postal Service offers two proposals for rescinding the surcharge. The first proposal is to simply file a notice with the Commission shortly before the exigent revenue target is reached and rescind the surcharge. Report at 3. The second proposal is to alter the schedule of regular rate adjustments to coincide with the rescission of the exigent surcharge. This could effectively use the regular rate adjustment as an offset to the removal of the exigent surcharge in developing new prices. *Id.* at 3-4. The Postal Service mentions that the above proposals are not mutually exclusive, *i.e.*, a variety of options are available. *Id.* at 4.

The Public Representative has no preference as to whether the Postal Service rescinds the exigent surcharge in a stand-alone docket, or combined with a regular (annual) price adjustment. However, the Postal Service has not provided even an outline of the methodology that would be used in either instance. Absent any

discussion by the Postal Service, the Public Representative is unable to comment further on whether either approach will result in a fair, equitable, and legal outcome.

C. Public Representative's Position

In upholding transparency and predictability of postal rates, the Public Representative urges the Commission to settle upon a methodology for reversing the exigent surcharge at this time. The Commission has provided the Postal Service with ample opportunity to provide a plan of its own for review and comment. The Postal Service has not taken full advantage of this opportunity. Thus, the Commission should consider all alternatives presented in comments (or outline a methodology of its own) and provide guidance to the Postal Service and the mailing community regarding the reversal of the exigent surcharge. The Public Representative submits a proposal within these comments for the Commission's consideration in this process.

III. ALTERNATE PROPOSAL

A. General Approach

The Commission invited interested parties to comment on alternate proposals for removing the exigent surcharge that may assist the Commission in adopting or modifying the Postal Service's removal plan. Order No. 2089 at 4.

The Public Representative previously discussed treatment of the exigent surcharge on brief. This discussion, repeated below, provides an outline for both administering the rescission of the surcharge and implementing interim price adjustments.

To solve some of the problems associated with rolling back temporary exigent price increases, the Public Representative proposes that any exigent price increase approved by the Commission be administered as a price surcharge added to the prices approved in Docket No. R2013-10.

The approved Docket No. R2013-10 price tables would remain unchanged and not include exigent prices.

A schedule of surcharges would be developed representing any approved exigent price increases (the delta in prices). Most rounding and other price setting constraints proposed by the Postal Service in the exigent docket could be observed. The surcharge price table would remain in effect until the Postal Service recoups the fixed contribution the Commission approves due to the exigency.

Any CPI increases approved prior to the expiration of the surcharge would be based on the existing, un-surcharged rates, with surcharges subsequently added. "Banking" authority rules would be applied to un-surcharged rates. Thus, the surcharge schedule could be used in future years to adjust prices to include the exigent surcharge.

Public Representative Comments in Response to the Exigent Request of the United States Postal Service, November 26, 2013 at 22-23.

The Commission adopted treatment of exigent prices as a surcharge in its order granting the exigent price increase. See Order No. 1926 at 180-185. The Commission explains:

The surcharge is calculated as the difference between the Docket No. R2013-11 prices and the Docket No. R2013-10 prices. [footnote omitted] For example, the surcharge for First-Class Single-Piece letters is 2 cents, the difference between the Docket No. R2013-11 price of 49 cents and the Docket No. R2013-10 price of 47 cents.

Id. at 181.

The amount of the surcharge, by subclass, is calculated by comparing the Docket No. R2013-10 prices and Docket No. R2013-11 prices.

Id. at 183.

The Public Representative suggests that treating the exigent increase as a surcharge provides a straightforward conceptual approach to (1) rescinding the surcharge and (2) administering any interim prices adjustments. The following example demonstrates both situations. The prices for Standard Mail (Commercial and

Nonprofit), High Density and Saturation Letters, Saturation Letters (3.3 ounces or less) are used in the example. See Mail Classification Schedule §1205.6.

B. Rescinding the Surcharge with No Interim Price Adjustment

The starting point is the prices approved in Docket No. R2013-10 (the price adjustment docket immediately prior to the exigent increase). The Docket No. R2013-10 prices for Standard Mail (Commercial and Nonprofit), High Density and Saturation Letters, Saturation Letters (3.3 ounces or less) are shown in Table 1.

Table 1
Saturation Letters (3.3 ounces or less)
[Approved Docket No. R2013-10]

Entry Point	Commercial (\$)	Nonprofit (\$)
Origin	0.190	0.116
DNDC	0.157	0.083
DSCF	0.147	0.073

The second piece of information that is necessary is the prices approved in Docket No. R2013-11 (the exigent docket). The Docket No. R2013-11 prices for Standard Mail (Commercial and Nonprofit), High Density and Saturation Letters, Saturation Letters (3.3 ounces or less) are shown in Table 2.

Table 2
Saturation Letters (3.3 ounces or less)
[Approved Docket No. R2013-11]

Entry Point	Commercial (\$)	Nonprofit (\$)
Origin	0.198	0.121
DNDC	0.164	0.087
DSCF	0.153	0.076

By subtracting the prices approved in Docket No. R2013-10 (shown in Table 1) from the prices approved in Docket No. R2013-11 (shown in Table 2), the surcharge can be determined for each price cell. The results (the surcharges) for Standard Mail (Commercial and Nonprofit), High Density and Saturation Letters, Saturation Letters (3.3 ounces or less) are shown in Table 3.

Table 3
Saturation Letters (3.3 ounces or less)
[Exigent surcharges]

Entry Point	Commercial (\$)	Nonprofit (\$)
Origin	0.008	0.005
DNDC	0.007	0.004
DSCF	0.006	0.003

For the trivial case of rescinding the surcharge without an intervening price adjustment, the new price for Standard Mail (Commercial and Nonprofit), High Density and Saturation Letters, Saturation Letters (3.3 ounces or less) are determined by subtracting the surcharges (Table 3) from the prices approved in Docket No. R2013-11 (Table 2). This is no different than saying that after the exigent surcharge is rescinded,

the prices will revert back to those approved in Docket No. R2013-10 (those shown in Table 1).

C. Rescinding the Surcharge with one (or more) Interim Price Adjustments

The following presents an example of implementing one (or more) interim price adjustments, and then rescinding the exigent price increase.

1. Interim Price Adjustment

There are many starting points for the Postal Service to choose from when designing rates for an interim price adjustment. For illustrative purposes, the Public Representative assumes that the Postal Service has proposed a 3 percent CPI adjustment that is to be distributed as evenly as practicable across all price cells given statutory and other price setting constraints.³

The Postal Service must start with the prices approved in most recent the price adjustment docket; for this example, the Standard Mail (Commercial and Nonprofit), High Density and Saturation Letters, Saturation Letters (3.3 ounces or less) prices approved in Docket No. R2013-10 (Table 1).⁴

As a ballpark estimate of new base prices the Postal Service could increase each price cell for Standard Mail (Commercial and Nonprofit), High Density and Saturation Letters, Saturation Letters (3.3 ounces or less) shown in Table 1 by 3 percent. This results in the price estimates shown in Table 4.

³ The important points of the following discussion, within reason, are not depended on the Postal Service's price setting approach.

⁴ Starting with the exigent prices approved in Docket No. R2013-11 (Table 2) would be inconsistent with treating the exigent increase as a surcharge, and result in prices slightly higher than statutorily allowed. It would also make it more difficult, in the future, to remove the full effects of the surcharge from base prices due to the compounding effect of basing new prices off of prices that include a surcharge.

Table 4
Saturation Letters (3.3 ounces or less)
[Ballpark estimate of a 3 percent across the board increase
applied to un-surcharged base prices]

Entry Point	Commercial (\$)	Nonprofit (\$)
Origin	0.195700	0.119480
DNDC	0.161710	0.085490
DSCF	0.151410	0.075190

The ballpark price estimates then must be adjusted to comply with all ratemaking criteria. For example, ballpark prices must be adjusted to ensure conformance with: (1) workshare discount requirements (39 U.S.C. § 3622(e)); (2) reduced rate provisions (39 U.S.C. § 3626); (3) rounding constraints; and (4) other ratemaking criteria, as applicable. The new base rates then have to be rechecked to ensure compliance with price-cap provisions (39 U.S.C. § 3622(d)). All regulatory requirements addressing data (volume, weighting, etc.) upon which new base prices are determined must be followed. After the above is complete, the new base prices are shown in Table 5.⁵

Table 5
Saturation Letters (3.3 ounces or less)
[3 percent across the board increase
after statutory and ratemaking criteria applied
(un-surcharged)]

Entry Point	Commercial (\$)	Nonprofit (\$)
Origin	0.196	0.119
DNDC	0.162	0.085
DSCF	0.151	0.075

⁵ Table 5 is illustrative only. No attempt was made to adhere to actual ratemaking principles or statutory requirements.

The only step remaining to arrive at the final interim prices is to re-add the surcharges to the new base prices. Table 6 shows the final prices, which are arrived at by adding the surcharges (Table 3) to the new base prices (Table 5).

Table 6
Saturation Letters (3.3 ounces or less)
[3 percent across the board increase
after statutory and ratemaking criteria applied
and surcharge added]

Entry Point	Commercial (\$)	Nonprofit (\$)
Origin	0.204	0.124
DNDC	0.169	0.089
DSCF	0.157	0.078

2. Rescinding the Exigent Price Increase

To rescind the exigent price increase, the surcharges (Table 3) are merely subtracted from the most recently approved total prices (most recently approved base prices plus surcharges). Using the above example, the new prices for Standard Mail (Commercial and Nonprofit), High Density and Saturation Letters, Saturation Letters (3.3 ounces or less) are determined by subtracting the surcharges (Table 3) from the most recently approved price adjustment (Table 6). This is no different than saying that after the exigent surcharge is rescinded, the prices will revert back to those most recently approved (those shown in Table 5). For clarity, the final rescinded prices are repeated in Table 7.

Table 7
Saturation Letters (3.3 ounces or less)
[Prices after rescission of the exigent surcharge]

Entry Point	Commercial (\$)	Nonprofit (\$)
Origin	0.196	0.119
DNDC	0.162	0.085
DSCF	0.151	0.075

Perfection will be elusive. Some will question whether the price cap should be applied to base prices as the Public Representative suggests, or applied to total prices (base prices plus surcharges). Others might express concerns over accounting for the continuing variations (decline) in mail volume, or many other possible adjustments that might be made. The Public Representative's example, presented above, provides a straightforward approach that should result in a reasonable outcome.

The Public Representative's major concern is that the Commission affirmatively adopts an approach, any reasonably supported approach, such that the mailing community knows what to expect when the exigent surcharge is rescinded. This will facilitate transparency, and ensure the predictability of future rates.

IV. QUESTIONS PROPOUNDED BY THE COMMISSION

The Commission invited interested parties to comment on: (1) compliance with workshare discount requirements; (2) combined or separate rate surcharge removal and price adjustment dockets; (3) price cap compliance with interim price adjustments; and (4) the notice of price adjustment to mailers. Order No. 2089 at 3.

A. Compliance with workshare discount requirements

The Commission asks: “If the Commission adopts the Postal Service’s first option, which the Postal Service identified as rescission of the exigent rate surcharge when it meets the surcharge revenue limit, does such a rescission require the Postal Service to demonstrate that the resulting prices comply with 39 U.S.C. § 3622(e)?” Order No. 2089 at 3.

The Public Representative makes several assumptions when answering this question. First, there will not be a concurrently filed price adjustment with this option. Second, the surcharge is interpreted, in the strict sense, as being a price separate and in addition to an established base price. Third, the base price (applicable price minus the surcharge), when approved, complied with the workshare discount requirements of 39 U.S.C. § 3622(e).⁶

Given the above assumptions, the Public Representative would simply subtract the surcharge from current prices (surcharges plus base prices) in re-establishing the prices going forward (new base prices). No effort would be made to re-analyze workshare discount requirements.

If the existing base price, when approved, met the requirements of 39 U.S.C. § 3622(e), and the underlying cost, volume, etc. data has not been updated, the prices should again meet all applicable workshare requirements.

If the underlying volume, weighting, etc. data has been updated, the Commission would be facing a timing problem similar to what it faces with the Annual Compliance Determination (ACD).⁷ The Commission has yet to express an ideal solution to the data

⁶ If there are no intervening price adjustments before rescission of the surcharge, this would point to the prices approved in Docket No. R2013-10. If there are one or more intervening price adjustments before rescission of the surcharge, this would mean the approved prices from the most recent price adjustment.

⁷ Every year during the Annual Compliance Determination (ACD), the Commission faces the issue of analyzing prices that meet statutory requirements when approved, but no longer do so at the time of the ACD because the underlying cost and volume information has changed.

timing problem. The approach propounded in many ACDs should be followed. The Postal Service should be directed to bring the prices back into compliance with the next regularly scheduled price adjustment.

The Public Representative sees value in preserving the concept of treating exigent increases strictly as surcharges in addition to base prices.⁸ Regardless, the magnitude of any non-compliance is likely to be small given the relatively short duration that the exigent surcharge will be in effect.

B. Combined or separate surcharge removal and price adjustment dockets

The Commission asks: “if the second option, which the Postal Service identified as absorbing the exigent rate surcharge, in whole or in part, coincident with a CPI rate adjustment, is utilized, must the Postal Service submit two filings: one to remove the surcharge and another pursuant to 39 C.F.R. part 3010?” [footnote omitted] Order No. 2089 at 4.

The Public Representative views the question of one versus two filings for the purpose of concurrently rescinding the exigent surcharge and implementing a price adjustment as one of form over substance. With either approach, the Postal Service must first remove the exigent surcharges from overall prices to obtain base prices. The Postal Service must then demonstrate that the price adjustment is only applied relative to base prices in determining new prices going forward. As long as both steps are clearly demonstrated, the form of the filing should not matter.

A slightly different issue is the effective dates of price changes if two filings are made instead of one. If the two filing approach is used and the effective dates for both price adjustments are the same, there should not be any issue. However, if the effective dates are different, the costs imposed on mailers to prepare for two different

⁸ The approach also has the benefits of simplicity, transparency, and the possibility of expedited approval.

sets of price adjustments might be higher. Thus, if the two filing approach is used, an effort should be made to have both price adjustments effective on the same day.

C. Price cap compliance with interim price adjustment

The Commission asks: “if there is a CPI rate adjustment before the exigent surcharge revenue limit is reached (*e.g.*, a rate adjustment during FY 2014) must the Postal Service address the total rate paid by ratepayers (the CPI base and increase plus the exigent surcharge) for compliance with 39 U.S.C. § 3622, or only address the base rate and CPI increase?” Order No. 2089 at 4.

To be consistent with treating the exigent increase as a surcharge, the surcharge should not be included in any compliance calculations. An interim CPI increase should be applied only to base prices (current prices minus exigent surcharges). Compliance with 39 U.S.C. § 3622 should be analyzed at this level. After the analysis is complete and compliance ensured, the exigent surcharge then should be added to the new base prices to determine the final new prices that mailers will pay.

This approach would appear to be consistent with the Commission’s statement in Docket No. R2013-11.

“As discussed above, the proposed prices are functionally a surcharge above the CPI-capped Docket No. R2013-10 prices.”

Order No. 1926. at 183.

The Public Representative acknowledges that the total new prices that mailers will pay may not be compliant with 39 U.S.C. § 3622. However, the Public Representative notes that this is consistent with treating the exigent increase as a surcharge, and can be fully justified by the exigent circumstances.⁹

⁹ Furthermore, the magnitude of non-compliance should be small because it will be based on some factor of the percentage of the exigent increase and the percentage of the interim CPI increase.

D. Notice of price adjustment to mailers

The Commission notes that: “The Commission identified 45 days in Order No. 1926 as the appropriate time for the Postal Service to file prior to the effective date of the surcharge removal. See Order No. 1926 at 185. Is 45 days sufficient notice? Does the amount of notice required depend upon the details of the removal plan the Commission approves?” Order No. 2089 at 4.

From the Public Representative’s perspective, 45 days appears to be adequate notice for a price adjustment. The details of how the price adjustment is arrived at should have no bearing on this issue. The Public Representative, however, will defer to the mailing community to argue for more or less time. They are in a much better position to inform the Commission of the necessary steps that have to be undertaken in the areas of programming, software updates, etc.

V. OTHER MATTERS

The Commission invited interested parties to “comment on any other issues relating to the removal of the exigent surcharge that may assist the Commission in adopting or modifying the Postal Service’s removal plan.” Order No. 2089 at 4.

The Revenue Collection Report submitted by the Postal Service includes a \$119.39 million adjustment to reflect the effect of Postage in the Hands of the Public.¹⁰ The Postal Service attempts to justify this adjustment by arguing that some of the mail sent used Forever stamps purchased prior to the effective date of the exigent surcharge for which the Postal Service received no exigent surcharge.

This prompted the Commission to ask the Postal Service whether or not Forever stamps purchased during the period in which the exigent surcharge is in effect will be used after the surcharge is no longer in effect.¹¹ If affirmed, the Commission then asked

¹⁰ Response of the United States Postal Service to Order No. 2075, May 15, 2014.

¹¹ Presiding Officer’s Information Request No. 13, May 30, 2014, Question 1(c).

the Postal Service to estimate the effect of Forever stamps purchased at the higher exigent rate that are used once the exigent rates are rescinded. *Id.*, Question 1(d).

The Postal Service affirmed “it is likely that some Forever stamps purchased during the period the exigent surcharge is in effect will be used after the surcharge is no longer in effect.”¹² However, the Postal Service was unable to estimate how many Forever stamps will be used after the surcharge is no longer in effect. *Id.*, Question 1(d).

The Public Representative urges the Commission to disallow any adjustment based on purchases of the Forever stamp. The Postal Service cannot be allowed to benefit from estimates made at the front end, while alleging it is unable to make estimates at the back end where it might not be beneficial to the Postal Service.

The Postal Service speculates that “it seems reasonable to expect that after any rate decrease were announced, purchases would decline as mailers instead tried to use their existing stock. Consequently, fewer stamps purchased at the surcharge price would be carried over to be used after the expiration of the surcharge.” *Id.*

The Public Representative submits it may be equally reasonable, and speculative, to suggest that mailers might not change their buying habits immediately before the exigent surcharge is rescinded. For example, if the exigent rescission is concurrently offset by a regular price adjustment (as optionally proposed by the Postal Service), there may be little actual change in price. Thus, mailers may have little incentive to change their buying habits. Alternatively, mailers may not care or may not treat a potential price decrease the same as a potential price increase. Thus, there may be little to no change in buying habits.

¹² Responses of the United States Postal Service to Questions 1-4 of Presiding Officer’s Information Request No. 13, June 6, 2014, Question 1(c).

Because of the inherent speculation, inability to develop an estimate, and potential detriment to mailers by accepting the Postal Service's approach, the Forever stamp revenue adjustment should be disallowed.

Respectfully submitted,

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